

1 ED KALZYNSKI
to
JEFFREY MILLER

November 5, 1999

Dear Mr. Miller:

I respond to your letter of November 1, which I received yesterday.

On page 1 you write: "It has been made clear to you in Beau Friedlander's letter of October 19, and in all the correspondence generally, that Context is more than willing to work with you to arrive at a manuscript that will be both satisfactory to you and Context and legally protected as well."

On the contrary, Beau wrote in his October 19 letter to me, page 2, ¶12 (which I cited in my note of October 26): "My lawyers requested changes for all of the material constituting copyright infringement, Specifically [sic], that these sections be appropriately paraphrased or that a factual summary be written in lieu of that material, and this meant everything for which we were not granted permission to reprint." Since my brother and mother refused permission, this clearly and unequivocally states that you are asking to delete virtually all of my brother's and mother's writings from the book, and replace them with paraphrases or summaries. This is so far beyond what is acceptable to me, that Beau's statement of this position showed that no agreement was possible between us. Hence, by the terms of the contract, I clearly had the right to terminate, and no lack of good faith on my part was indicated. Your concept of "good faith" seems to be that I must agree to everything that you demand.

As for Beau's ^{letter} ~~note~~ to me of October 26, I had not received it at the time I wrote my note to him of the same date.

As for your claim that it was made clear "in the correspondence generally" that Context was "willing to work with" me, etc., etc., I don't give that any weight, since the assurances that Beau has offered in his correspondence have proved unreliable, and when they've subsequently been corrected, they've been corrected to my disadvantage. For example, in some of my fairly recent letters (I don't have time to look them up now; you can dig them up yourself, or I'll look up the citations for you after I've got my current brief filed) I cited statements from some of Beau's early letters in which he clearly indicated that there were no libel problems with the book, and implied that the copyright problems were far less serious than they later turned out to be, in the opinion of his lawyers. Many of these statements were made by Beau before I signed the contract, and I signed the contract partly on the basis of those statements. So the bad faith here is on Beau's part, not mine.

As for item 2 in your letter of November 1, it is nonsense. As I made clear in my letter to Beau of October 27, 1999, I proposed that Context revise its agreement with me only as a quid pro quo for giving you the four documents that you had requested. The contract gives you

no right to insist that I deliver those or any other documents to you, I have no obligation of any kind to deliver them to you, and accordingly I can demand any quid pro quo that I choose in exchange for the documents. My decision to terminate the contract had nothing to do with the 4 documents or with the revision of the agreement that I proposed.

Your claim that I "insisted" that Context revise the contract is ridiculous. Look at the wording of my letters (#89, #90A). I wrote that I proposed an addition to the contract, and in #90A, page 4, I wrote, "Please let me know how you feel about the foregoing proposals." Obviously, therefore, I was presenting revision of the contract merely as a point for negotiation, not as a demand. Your claim that I "insist" on amending the contract is so obviously false that it is one of several points in your letter that clearly demonstrate your bad faith.

In fact: (a) I am perfectly willing to drop my proposal for revision of the contract, and any other similar requests or proposals, if you will drop your request for the four documents. (b) Even if you don't drop your request for the four documents, I am willing to negotiate about the quid pro quo that I will want in exchange for them. (c) I don't think this issue would be a major stumbling block; I think we could successfully negotiate it. The real problem is the

extent of the legal revisions that you want to make in Truth versus Lies. See my letter to Beau of October 27.

I did not terminate the contract in order to force an alteration of the contract. Your suggestion that I did so is pure fantasy and is unsupported by anything in my letters or elsewhere. If you think otherwise, then please cite the appropriate passages from my letters.

I did not "threaten to take the book elsewhere." I merely offered Beau an opportunity to get out of the contract if he so desired and indicated that I would have no problem with that since I could always get the book published elsewhere. This was in no sense a threat. In case you're interested, I have not carried on negotiations with any publisher other than Context. When the publisher whom I mentioned in my earlier letter wrote to me, I answered with a short note in which I politely declined his services. When he later sent me a reminder, I did not respond at all.

The clear truth is that early on, as is proven by his letters, Beau made statements to me that led me to reasonably believe that the legal revisions would be far less than what you are now asking. Beau made these statements to me in order to induce me to sign the contract. Under the circumstances, it is absurd for you to claim that I am showing lack of

good faith in exercising my right to terminate the contract on the grounds that I cannot accept legal revisions of the kind and extent that you are now asking. It is Beau, and not I, who has shown bad faith.

I terminated the contract legitimately and in good faith, and the contract ceased to have any force as of October 26, 1991, or at least as of the date on which you received my notice.

Let me digress for a moment to address the issue of time-pressure.

Beginning long before we signed the contract, Beau knew (as is proved by the correspondence) that I was involved in legal efforts related to my criminal case that would absorb much of my time and effort and would require me to meet legal deadlines.

Beau claims that certain time-limits must be met for business reasons in connection with the publication of the book. This may be true as far as I know, but it is Beau's own fault that we are under time-pressure.

Beau should not have begun publicizing the book and should not have taken any other action that committed him to publish the book, until after it had definitely been determined that we would be able to reach agreement as to the legal revisions, since there was no certainty that we would be able to reach such agreement.

or that I would not have occasion to exercise my right to terminate the contract.

When Beau began publicizing the book, and later when he made dates with his printer and his distributor, he did so without consulting me and without even giving me prior notice. In acting thus he took a gamble that we would be able to agree on the legal revisions, and do so within a certain period of time. (In my letter to Beau of May 31, 1999, I warned him about the danger of committing himself to time-constraints, but he ignored my warning.) Beau lost his gamble and now he expects me to pay the price for his folly. There would have been no time-pressure if Beau had been prudent enough to avoid publicizing the book, or in any other way committing himself to publish it, until we had reached agreement about the legal revisions.

Beau says the book has progressed slowly by industry standards. No doubt. But that is your and his fault. There were many months of delay before you completed the legal read-through and arranged the conference call with Denvir and Clarke. None of that was in any way my fault. Then, after many months of delay on your and Beau's part, roughly two months ago (I don't have the exact date; it can be determined from the correspondence, but I don't have time to look that up now) Beau suddenly began putting me under pressure to

get things done quickly; in effect, putting me under pressure to make up for lost time that you and he had squandered.

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As I stated earlier, the contract has been validly terminated. However, I will be willing to sign an agreement to reinstate the contract, without any changes; provided that the following conditions are satisfied:

(i) We must negotiate a mutually satisfactory version of the text of Truth versus Lies. This will not be possible unless Beau is willing to back off a long way from the position he stated in his letter of 10/19/99 (see page 1, ¶ 3 of the present letter) that virtually all of my brother's and mother's writings must be replaced by paraphrases or summaries.

(ii) I have a brief to prepare in my criminal case, it is due on December 27, and even without doing any work with Context I will probably be hard-pressed to get it done in time. My consistent policy heretofore has been to give first priority to the legal work on my criminal case, second priority to my work with Context, and to give lower priority to all other work. I will continue this policy if you want to undertake further negotiation with me. But I will not bend to any Time-pressures that interfere with the legal work on my criminal case, or that would force us to do a slipshod

job of preparing a mutually acceptable text for Truth versus Lies. If this timing causes problems for Beau, then it's his own fault, since it was by his own choice that he took the gamble of prematurely committing himself to publish the book, and moreover he knew from the beginning that I had legal work that would take much of my time and subject me to deadlines.

(iii) Either you must drop your request for those 4 documents, or you must give me some quid pro quo that will compensate me for the legal risk that I take in giving you the documents. In all sincerity, I don't think this issue will be a major stumbling-block. I think we can reach agreement on it.

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To summarize:

The plain truth, which is solidly substantiated by the correspondence, is that from the beginning until quite recently, Beau willfully or recklessly misled me about the amount of material in Truth versus Lies that his lawyers believed would have to be deleted, changed, or replaced with paraphrases or summaries. The provision allowing me to terminate the contract was intended for use in just such an eventuality (among others). Consequently, your claim that I am showing a lack of good faith in exercising my right to terminate the contract, is ludicrous.

Any damage that Beau suffers due to

termination of the contract is his own fault, because (A) he misled me, and (B) without my consent, he imprudently took actions (e.g., publicity) that committed him to publish the book, and he did so before it had been determined that we would be able to reach agreement about the legal revisions. If he had refrained from initiating any actions relative to the publication of the book until after ~~the~~^{we} had reached agreement, he would have suffered no damage.

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I will not give any answers, other than short notes, to any further communications from you ~~and~~^{or} from Beau, until after I have filed my brief in my criminal case, which will probably be some time around mid-December.

Sincerely yours,

Theodore J. Kaczynski

P.S. A correction to the last paragraph of Beau's letter to me of 10/29/99: I never requested that Beau change the copy on the front flap of the book-jacket. TJK

P.P.S. What Beau said in the last paragraph of his letter to me of 10/29/99 was a possible interpretation of what I wrote in my letter 89A, page 5, #3 ("please do not say it"), but it was not my intention to ask Beau to reprint the book-jackets. TJK

P.P.P.S. In the last paragraph of his letter of November 1, 1999, Beau possibly means to imply that my decision to terminate the contract was in some way caused by Stephen Dubner's article in Time. This is clearly false. See my letter #87, of October 3, 1999, which predates the appearance of Dubner's article. Letter #87 shows clearly the real source of the difficulty between Beau and me, and it confirms that the real reason why I terminated the contract was precisely what I said it was in my note of October 26: The legal revisions that you demand in Truth versus Lies are far too extensive for me to accept. TJK

P.P.P.S. A further point: This is something that Beau knows well, and therefore you probably know it too, but since there seems to be some evasiveness in this respect on your and Beau's part, I will state the point explicitly in order to put an end to your evasions.

The issue between us is not the wording of the paraphrases and summaries that you want to use. The issue is that you refuse to use the original quoted passages. You say that Context has offered to "work with me," but what you seem to mean is that you will work with me on the wording of the paraphrases and summaries. But at present there would be no point in my working with you on the wording of the paraphrases and summaries, because that is not the issue. The issue is your refusal to use the original

quoted passages, and what we have to negotiate is the amount of original quoted material to be retained.

You may claim that the original quoted material would expose you to excessive risk of a lawsuit. Assuming that that is the case, that is what the termination provision was inserted in the contract for — to give me a way out in case you wanted to delete more quoted material than was acceptable to me, or make other changes that I found unacceptable.

The contract gives me the unqualified right to terminate in preference to accepting revisions of the manuscript. Your claim that good faith requires me to accept revisions that would reduce your legal risk to an acceptable level, would, ^{if accepted,} have the effect of completely nullifying the provision that allows me to terminate, since that provision would never have any plausible application. Thus, your "good faith" argument is just a gimmick for nullifying a provision of the contract that Beau doesn't like. If he doesn't like it, he shouldn't have signed the contract.

One last point: To any argument I may offer you, you will merely reply with sophistries designed to justify your claims. Hence, I will waste no more time arguing these issues with you.

Therefore, if in any future communication of yours, you put forward any type of assertion, claim, or argument, and if I omit to respond to

your assertion, claim or argument, my omission of response will not indicate on my part any acceptance of, or acquiescence in, your assertion, claim, or argument. I simply will not waste my time bandying words with you futilely.

However, I am willing to negotiate with you concerning the amount of original quoted material to be retained in Truth versus Lies, and other similar issues.

Ted Kaczynski